

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1251-WQ-E TCEQ ID: RN102635604 CASE NO.: 34347
RESPONDENT NAME: City of McAllen

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of McAllen North Wastewater Treatment Plant, located on Sprague Road approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107, Hidalgo County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 19, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Richard Cortez, Mayor, City of McAllen, P. O. Box 220, McAllen, Texas 78505 Mr. Roel Rodriguez, P.E., General Manager, City of McAllen, P. O. Box 220, McAllen, Texas 78505 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 17, 2007, May 21, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 13, 2007 (NOE)</p> <p>Background Facts: These were routine and enforcement follow-up investigations. One violation was documented.</p> <p>This order was remanded back to staff at the February 27, 2008 Agenda to include a \$10,000 reduction which removed the economic benefit enhancement.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of untreated wastewater [30 TEX. ADMIN. CODE § 305.125(1), TPDES Permit No. WQ0010633004 Permit Conditions No. 2(g), and TEX. WATER CODE § 26.121(a)(1)].</p>	<p>Total Assessed: \$22,400</p> <p>Total Deferred: \$0 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$22,400</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification:</p> <p>The violation was a discharge that exposed the environment to pollutants which exceeded protective levels, resulting in a fish kill of approximately 2,000 fish.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On or about March 27, 2006, initiated plans and obtained funds to eliminate the 30-inch force main at Frontera Road and Main Street, construct a new 54-inch gravity sewer, and demolish the Trenton lift station;</p> <p>b. From May 15, 2007 to May 16, 2007, pumped a total of 261,000 gallons of fresh water to flush the storm sewer;</p> <p>c. On May 17, 2007, used 570 pounds of HTH to disinfect the temporarily diked McAllen Main Canal;</p> <p>d. By May 17, 2007, completed temporary repairs to the 30-inch force main; and</p> <p>e. On May 19, 2007, removed the temporary dikes to the McAllen Main Canal.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 365 days after the effective date of this Agreed Order:</p> <p>i. Eliminate the 30-inch force main at Frontera Road and Main Street;</p> <p>ii. Construct a new 54-inch gravity sewer; and</p> <p>iii. Demolish the Trenton lift station.</p> <p>b. Within 380 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision a.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	16-Jul-2007	Screening	31-Jul-2007	EPA Due	
	PCW	31-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of McAllen
Reg. Ent. Ref. No.	RN102635604
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION	
Enf./Case ID No.	34347
Docket No.	2007-1251-WQ-E
Media Program(s)	Water Quality
Multi-Media	
Admin. Penalty \$ Limit Minimum	\$0
Maximum	\$10,000
No. of Violations	1
Order Type	Findings
Enf. Coordinator	Pamela Campbell
EC's Team	Enforcement Team 1

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$20,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **12%** Enhancement **Subtotals 2, 3, & 7** **\$2,400**

Notes The Respondent has two NOV's for the same violations and one NOV for unrelated violations.

Culpability **No** **0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0%** Reduction **Subtotal 5** **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts **\$25,651** **50% Enhancement*** **Subtotal 6** **\$10,000**
Approx. Cost of Compliance **\$250,000** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$32,400**

OTHER FACTORS AS JUSTICE MAY REQUIRE **-31%** **Adjustment** **-\$10,000**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Reduction to remove the economic benefit enhancement.

Final Penalty Amount **\$22,400**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$22,400**

DEFERRAL **0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$22,400**

Screening Date 31-Jul-2007

Docket No. 2007-1251-WQ-E

PCW

Respondent City of McAllen

Policy Revision 2 (September 2002)

Case ID No. 34347

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102635604

Media [Statute] Water Quality

Enf. Coordinator Pamela Campbell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of...

Enter Number Here

Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 12%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has two NOV's for the same violations and one NOV for unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 31-Jul-2007 Respondent City of McAllen Case ID No. 34347 Reg. Ent. Reference No. RN102635604 Media [Statute] Water Quality Enf. Coordinator Pamela Campbell Violation Number 1	Docket No. 2007-1251-WQ-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;"> Policy Revision 2 (September 2002) PCW Revision June 26, 2007 </div>																			
Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. WQ0010633004 Permit Conditions No. 2(g), and Tex. Water Code § 26.121(a)(1)																				
Violation Description Failed to prevent the unauthorized discharge of untreated wastewater. Specifically, on May 15, 2007, while repairing a force main break at Main Street and Frontera Road, the Respondent caused an unauthorized discharge of approximately 2,494,800 gallons of untreated wastewater from the Trenton lift station into a diked area of the McAllen Main Canal to occur, resulting in a fish kill of approximately 2,000 fish.																				
Base Penalty \$10,000																				
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th colspan="3" style="text-align: center; font-weight: normal;">Harm</th> <th style="width: 10%;"></th> </tr> <tr> <th style="text-align: left; font-weight: normal;">Release</th> <th style="text-align: center; font-weight: normal;">Major</th> <th style="text-align: center; font-weight: normal;">Moderate</th> <th style="text-align: center; font-weight: normal;">Minor</th> <th></th> </tr> </thead> <tbody> <tr> <td style="text-align: left;">Actual</td> <td style="text-align: center;">x</td> <td></td> <td></td> <td rowspan="2" style="vertical-align: middle;"> Percent 50% </td> </tr> <tr> <td style="text-align: left;">Potential</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Harm				Release	Major	Moderate	Minor		Actual	x			Percent 50%	Potential			
	Harm																			
Release	Major	Moderate	Minor																	
Actual	x			Percent 50%																
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>> Programmatic Matrix																				
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	Major	Moderate	Minor																	
Falsification				Percent 0%																
Matrix Notes	Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of this violation.																			
Adjustment \$5,000																				
<div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 auto;"></div> \$5,000																				
Violation Events																				
<table style="width: 100%;"> <tr> <td style="width: 40%;"> Number of Violation Events 4 </td> <td style="width: 20%; text-align: center;">4</td> <td style="width: 40%;"> Number of violation days </td> </tr> </table> <table style="width: 100%;"> <tr> <td style="width: 30%; vertical-align: top;"> <div style="font-size: x-small;">mark only one with an x</div> <div style="border: 1px solid black; padding: 2px;"> daily monthly quarterly semiannual annual single event </div> </td> <td style="width: 30%; text-align: center;"> <div style="border: 1px solid black; padding: 2px;">x</div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> </td> <td style="width: 40%; vertical-align: middle;"> Violation Base Penalty \$20,000 </td> </tr> </table> <div style="border: 1px solid black; padding: 5px; font-size: x-small;"> Four daily events are recommended from the date the unauthorized discharge occurred (May 15, 2007) to the date the discharge ceased, temporary repairs were completed, and the area was cleaned up and disinfected (May 19, 2007). </div>		Number of Violation Events 4	4	Number of violation days	<div style="font-size: x-small;">mark only one with an x</div> <div style="border: 1px solid black; padding: 2px;"> daily monthly quarterly semiannual annual single event </div>	<div style="border: 1px solid black; padding: 2px;">x</div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin: 2px;"></div>	Violation Base Penalty \$20,000													
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Economic Benefit (EB) for this violation																				
<table style="width: 100%;"> <tr> <td style="width: 50%;"> Estimated EB Amount \$25,651 </td> <td style="width: 50%;"> Statutory Limit Test </td> </tr> <tr> <td></td> <td> Violation Final Penalty Total \$22,400 </td> </tr> <tr> <td colspan="2" style="text-align: right;"> This violation Final Assessed Penalty (adjusted for limits) \$22,400 </td> </tr> </table>		Estimated EB Amount \$25,651	Statutory Limit Test		Violation Final Penalty Total \$22,400	This violation Final Assessed Penalty (adjusted for limits) \$22,400														
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Economic Benefit Worksheet

Respondent City of McAllen
Case ID No. 34347
Reg. Ent. Reference No. RN102635604
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$250,000	15-May-2007	31-Oct-2008	1.5	\$1,221	\$24,429	\$25,651
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost to replace the existing force main. The date required is the date of the unauthorized discharge and the final date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250,000

TOTAL

\$25,651

Compliance History

Customer/Respondent/Owner-Operator:	CN600343743	City of McAllen	Classification: AVERAGE	Rating: 2.67
Regulated Entity:	RN102635604	CITY OF MCALLEN NORTH WASTEWATER TREATMENT PLANT	Classification: AVERAGE	Site Rating: 1.20
ID Number(s):	WASTEWATER WASTEWATER WASTEWATER WASTEWATER WASTEWATER WASTEWATER LICENSING	EPA ID PERMIT PERMIT PERMIT PERMIT LICENSE	TX0093106 WQ10633004 WQ0010633004 TPDES0093106 TX0093106 WQ0010633004	
Location:	SPRAGUE ROAD APPROXIMATELY 1.5 MILES SW OF THE INTERSECTION OF FM 2061 AND SH 107, HIDALGO COUNTY TRENTON LIFT STATION REGION 15 - HARLINGEN			Rating Date: September 01 06 Repeat Violator: NO
TCEQ Region:	July 27, 2007			
Date Compliance History Prepared:	Enforcement			
Agency Decision Requiring Compliance History:	July 27, 2002 to July 27, 2007			
Compliance Period:	TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Pamela Campbell Phone: 512 239-4493			

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? City of McAllen
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/18/2003	(126139)
2 05/26/2004	(271844)
3 06/30/2004	(278510)
4 05/20/2005	(378679)
5 04/12/2007	(554533)
6 04/30/2007	(558591)
7 07/13/2007	(561237)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/28/2004	(271844)		
Self Report?	NO	Classification:	Minor
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1)	
		30 TAC Chapter 305, SubChapter F 305.125(5)	
		30 TAC Chapter 317 317.4(g)(5)	
Rqmt Prov:		PERMIT Operational Requirements 1. (page9)	
Description:		Failure to at all times ensure that the aeration basins are properly operated and maintained.	
Self Report?	NO	Classification:	Minor
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1)	
		30 TAC Chapter 305, SubChapter F 305.125(5)	
Rqmt Prov:		PERMIT Operational Requirements 1. (page9)	
Description:		Failure to at all times ensure that the dechlorination system is properly operated and maintained.	
Self Report?	NO	Classification:	Minor
Citation:		30 TAC Chapter 317 317.7(e)	
Description:		Failure to ensure that the plant area is completely fenced with lockable gates at all access points.	
Date: 05/20/2005	(378679)		
Self Report?	NO	Classification:	Moderate
Citation:		30 TAC Chapter 305, SubChapter O 305.535(c)(1)[G]	
Rqmt Prov:		PERMIT Permit Conditions: 2. g.,	
Description:		Failure to prevent the discharge of wastewater or any other waste.	
Date: 04/16/2007	(554533)		
Self Report?	NO	Classification:	Minor
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1)	
		30 TAC Chapter 305, SubChapter F 305.125(4)	
		30 TAC Chapter 305, SubChapter F 305.125(5)	
Description:		Failure to prevent the unauthorized discharge of wastewater from the collection system.	
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MCALLEN
RN102635604**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1251-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of McAllen ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates a wastewater treatment facility with a collection system force main located on Sprague Road approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107, Hidalgo County, Texas (the "Facility").

2. The City has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on May 17, 2007, TCEQ staff documented an unauthorized discharge of untreated wastewater. Specifically, on May 15, 2007, while repairing a force main break at Main Street and Frontera Road, the City caused an unauthorized discharge of approximately 2,494,800 gallons of untreated wastewater from the Trenton lift station into a diked area of the McAllen Main Canal to occur, resulting in a fish kill of approximately 2,000 fish. The fish kill was documented during a May 21, 2007 follow up investigation.
4. The City received notice of the violations on or about July 18, 2007.
5. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. On or about March 27, 2006, initiated plans and obtained funds to eliminate the 30-inch force main at Frontera Road and Main Street, construct a new 54-inch gravity sewer, and demolish the Trenton lift station;
 - b. From May 15, 2007 to May 16, 2007, pumped a total of 261,000 gallons of fresh water to flush the storm sewer;
 - c. On May 17, 2007, used 570 pounds of HTH to disinfect the temporarily diked McAllen Main Canal;
 - d. By May 17, 2007, completed temporary repairs to the 30-inch force main; and
 - e. On May 19, 2007, removed the temporary dikes to the McAllen Main Canal.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City failed to prevent the unauthorized discharge of untreated wastewater, in violation of 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System Permit No. WQ0010633004 Permit Conditions No. 2(g), and TEX. WATER CODE § 26.121(a)(1).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Twenty-Two Thousand Four Hundred Dollars (\$22,400) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid the Twenty-Two Thousand Four Hundred Dollar (\$22,400) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Twenty-Two Thousand Four Hundred Dollars (\$22,400) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of McAllen, Docket No. 2007-1251-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The City shall undertake the following technical requirements:
 - a. Within 365 days after the effective date of this Agreed Order:
 - i. Eliminate the 30-inch force main at Frontera Road and Main Street;
 - ii. Construct a new 54-inch gravity sewer; and
 - iii. Demolish the Trenton lift station.
 - b. Within 380 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

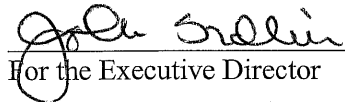
3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

8. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

4/15/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of McAllen. I am authorized to agree to the attached Agreed Order on behalf of the City of McAllen, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of McAllen waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

3/17/08
Date

ROEL RODRIGUEZ
Name (Printed or typed)
Authorized Representative of
City of McAllen

GENERAL MANAGER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Handwritten text at the top of the page, possibly a header or introductory paragraph.

Second block of handwritten text, continuing the narrative or list.

Third block of handwritten text, appearing as a separate section or entry.

Fourth block of handwritten text, located in the lower middle portion of the page.

Final block of handwritten text at the bottom of the page, possibly a conclusion or signature.